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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/649,778

08/28/2003

Stefan Holz

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5851

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EXAMINER

SING, SIMON P

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

01/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEFAN HOLZ,
JANE LIU and DAVE WINIKOFF

Application 10/649,778
Technology Center 2600

Mailed: January 12, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal*.

BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on July 1, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on November 11, 2007, in response to the Examiner's Answer mailed September 12, 2007. Title 37, Code of Federal Regulations, §41.43 (2007) states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed January 25, 2008, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answers requires a Director or designee's approval.¹

INFORMATION DISCLOSURE STATEMENT

Appellants filed an Information Disclosure Statement (IDS) dated August 13, 2008. There is no indication on the record that the Examiner has considered the above IDS. MPEP § 609 requires the Examiner to consider any IDS filed by Applicant if timely submitted. A written communication notifying Appellants of the Examiner's consideration of the above IDS is required.

¹ TC 2600 allows approval by a Director, Special Program Examiner (SPRE) or Quality Assurance Specialist (QAS).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to vacate the Communication mailed January 25, 2008;
- 2) to generate and mail either:
 - a) a revised Communication properly acknowledging to the Reply Brief dated November 11, 2007 in accordance with MPEP § 1208, part II.;
 - OR
 - b) to issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate; and
- 3) to consider the Information Disclosure Statement filed August 13, 2008; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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